

**FPC MONTGOMERY, AL.
INFORMAL RESOLUTION FORM**

DATE: 5-16-05STAFF SIGNATURE: A. BrownINMATE NAME: LEE VANCE THOMAS, III.,REG. NO. 11371-042Inf. Rs.# 726

NOTICE TO INMATE: You are advised that prior to filing a Request for Administrative Remedy (BP-9), you MUST attempt to informally resolve your complaint through your unit counselor. Please follow the three (3) steps below:

1. STATE YOUR SPECIFIC COMPLAINT: I request that I receive the early release benefits as a result of my future participation in the 500hr. residential drug abuse program offered here at FPC Montgomery.

2. STATE WHAT EFFORTS YOU HAVE MADE TO INFORMALLY RESOLVE YOUR COMPLAINT: I requested that I receive early release benefits my RDAP interview with Ms. Ware; See, Exhibit: (1). I requested that I receive release benefits by way of a inmate request to staff, which I submitted to Dr. Thompson. See; Ex.(2). Both of my requests were denied.

3. STATE WHAT RESOLUTION YOU EXPECT: I request that I be given early release benefits as a result of my future participation in RDAP.

INMATE SIGNATURE: [Signature]DATE: 5-16-05

CORRECTIONAL COUNSELOR'S COMMENTS/STEPS TAKEN TO RESOLVE: Your early release is based on the two point enhancement for a week in your PSI. Please see attached exhibit which is part of your documentation.

COUNSELOR'S SIGNATURE: A. BrownDATE: 5-17-05UNIT MGR'S REVIEW: C. AllenDATE: 5-17-05**STAFF ACTION:**☐ NOT ACTED ON-STATE REASONS IN COMMENTS☐ INFORMALLY RESOLVED☐ NO INFORMAL RESOLUTION-(BP-9) ISSUED☐ IF DHO or UDC, DATE FORM RETURNED TO INMATE: _____

Inmate Form Returned to Counselor	BP-9 Given to Inmate	BP-9 Returned from Inmate	BP- Delivered to A/W
Date: <u>5-16-05</u>	<u>5-18-05</u>	<u>5-18-05</u>	<u>5-20-05</u>
Time: <u>1:30 pm</u>	<u>11:45 AM</u>	<u>1:10 pm</u>	<u>9:00 AM</u>
Counselor: <u>A. Brown</u>	<u>A. Brown</u>	<u>A. Brown</u>	<u>[Signature]</u>

SCANNED

U.S. DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

INSUFF

REQUEST FOR ADMINISTRATIVE REMEDY

OB 5-18-05 #414

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: THOMAS, LEE V., III. 11371-042 MON-H FPC MONTGOMERY
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST INSUFFICIENT SPACE See... ATTACHMENT

5-18-05

DATE

SIGNATURE OF REQUESTER

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 376861-F1CASE NUMBER: 376861-FL

Part C- RECEIPT

Return to:

THOMAS, LEE V., III
LAST NAME, FIRST, MIDDLE INITIAL11371-042
REG. NO.MON
UNITFPC, Montgomery
INSTITUTION

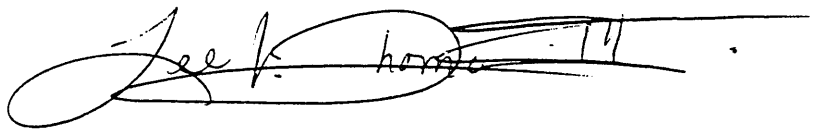
ATTACHMENT

I hereby appeal the RDAP's denial of my BP-81 on the following grounds:

1. I am being denied the one year sentence reduction upon completion of the RDAP based on the fact that I received a two level sentence enhancement for possession of a fire arm during a drug trafficking offense (i.e. the enhancement was imposed under 18 U.S.C. §3553(b) of the United States Sentencing Guidelines §2D1.1(b)(1)).
2. The United States Supreme Court recently declared 18 U.S.C. §3553(b) as an unconstitutional provision of law because, it violated a defendant's Sixth Amendment right to jury trial, to be found guilty beyond a reasonable doubt, and also violated the Fifth Amendment's due process of law. See Blakely v. Washington, 124 S.Ct. 2531 (2004); United States v. Booker, 543 U.S. _____, 125 S.Ct. 738 (2005).

WHEREFORE, it is axiomatic that I am being denied a liberty interest and such denial by the RDAP is based on an unconstitutional provision of law. Consequently, because relying on an unconstitutional provision of law is in itself a violation of the constitution, there exists no possible fashion in which to deny this request and not violate my Constitutional Rights under the Sixth Amendment and Due Process (i.e. a one year sentence reduction constitutes a liberty interest). For the foregoing reasons this petition should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee K. Harris", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end.

U.S. Department of Justice
Federal Bureau of Prisons

RESPONSE TO REQUEST FOR ADMINISTRATIVE REMEDY

From: Thomas, Lee	11371-042	Montgomery H	FPC Montgomery
LAST NAME, FIRST, MIDDLE INITIAL	REG. NO.	UNIT	INSTITUTION

Part B- RESPONSE

Remedy ID - 376861-F1

This is in response to your Request for Administrative Remedy receipted May 20, 2005, in which you are seeking to receive early release benefits upon your completion of the Residential Drug Abuse Program (RDAP).

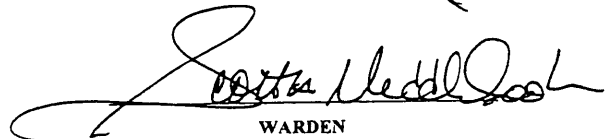
Program Statement 5330.10, Drug Abuse Programs Manual, Inmate, provides in Section 6.1.1 that, "... as an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release...inmates whose current offense is a felony...that involved the carrying, possession, or use of a firearm or other dangerous weapons or explosives...." In addition, Program Statement 5162.04, Categorization of Offenses, provides in Section 7(b) that an inmate who was convicted of a drug offense under 21 U.S.C. 841 who also receives a two-level enhancement of possession of a firearm has been convicted of an offense that will preclude 3621(e) eligibility for early release. The authority of the Bureau of Prisons to make this determination has been affirmed by the U.S. Supreme Court in Lopez v. Davis.

A review of your Presentence Investigation Report and Judgment in a Criminal Case confirms that you were convicted of a drug offense and that you received a two-level enhancement for possession of a firearm. Accordingly, based upon the above cited policies and Supreme Court decision, you are ineligible for 3621(e) early release. Therefore, your request for relief is denied.

In accordance with Program Statement 1330.13, Administrative Remedy Program, "An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP10) to the appropriate Regional Director within 20 calendar days of the date the Warden signed the response."

5/25/05

DATE


WARDEN



U.S. Department of Justice
Federal Bureau of Prisons
Federal Prison Camp

Maxwell Air Force Base
Montgomery, Alabama 36112

May 20, 2005

MEMORANDUM FOR David Thompson, Drug Treatment Coordinator

fn
FROM:

Samie Douglas
Lear Taylor-Cruz, Administrative Remedy Clerk

SUBJECT:

BP-9 Investigation/Response THOMAS, Lee V., III. Reg. No.:
11371-042

Please investigate the attached BP-9, receipted **May 20, 2005**, and prepare a typed, final response. The response should be submitted via LAN and hard copy through the Associate Warden by **May 25, 2005**.

The first paragraph of the response should note the date receipted as reflected in this memorandum. Summarize the inmate's complaints/allegations and requested remedy. In paragraph two and subsequent paragraphs, identify staff investigation and review of complaints/allegations; personalize response without using names; be responsive, address each issue; and state policy, quoting when and where appropriate. The response shall be written so that it could be released to any inmate and to the general public under the Freedom of Information and Privacy Acts.

The last paragraph of the response should be the recommendation for relief, e.g., "Your appeal is denied," "Relief is granted," "Your appeal is granted in part and denied in part," etc.

You should always first talk with the inmate who submitted the BP-9. In many cases, the BP-9 may still be handled informally at this stage. If this is done, the inmate will need to sign and date the BP-9 original stating he withdraws it, and the investigator will sign as a staff witness. If the BP-9 is not informally resolved or withdrawn at this stage, the investigator should talk to all parties concerned in the complaint.

If you have any questions or need any help, please contact me immediately.

U.S. Department of Justice

Regional Administrative Remedy Appeal

Federal Bureau of Prisons

106 6-2-05 # 213

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: THOMAS, LEE V., III. 11371-042 BHM-F FPC MONTGOMERY
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A—REASON FOR APPEAL INSUFFICIENT SPACE See... ATTACHMENT

6/02/05

DATE

SIGNATURE OF REQUESTER

Part B—RESPONSE

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

CASE NUMBER: _____

ORIGINAL: RETURN TO INMATE

Part C—RECEIPT

CASE NUMBER: _____

Return to: _____
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

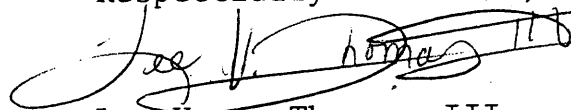
ATTACHMENT

The Warden's denial to my BP-9 is based on the fact that Program Statement 5162.04 precludes inmates from eligibility for early release. However, as set forth in my BP-9, any reliance by the BOP on sentence enhancements constitutes reliance on an unconstitutional provision of law. See, United States v. Booker, 543 U.S. ---, 125 S.Ct. 738 (2005)(holding that 18 U.S.C. § 3553(b) U.S.S.G. is an unconstitutional provision of law which violates a defendant's Sixth Amendment right to trial and to be found guilty beyond a reasonable doubt).

It is true, the Court in Lopez v. Davis, granted the BOP discretion to interpret policy. However, policy is no longer a question here. Under Booker, the BOP does not have discretion to apply an unconstitutional law thus, in the new world of Booker, Policy Statement 5162.04 is unconstitutional because it relies on sentence enhancements which were declared by the Supreme Court to be unconstitutional. See, Booker.

Based upon the foregoing reasons, this appeal should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Lee V. Thomas III", is written over a horizontal line. The signature is stylized with a large initial "L" and a cursive "V".

Lee Vance Thomas, III

Regional Administrative Remedy Appeal No. 376861-R1
Part B - Response

This is in response to your Regional Administrative Remedy Appeal receipted June 6, 2005. You allege the Bureau of Prisons (BOP) did not take into account court precedent which you state prohibits the Bureau of Prisons from using Program Statement 5162.04, Categorization of Offenses to deny you early release. As relief, you seek to have your eligibility for early release provisionally approved.

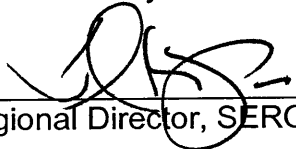
Program Statement 5162.04, Categorization of Offenses, states that inmates convicted of an offense listed in Section 7 may be denied certain Bureau program benefits, including early release pursuant to 18 U.S.C. § 3621(e). You were convicted of Possession with Intent to Distribute Cocaine Hydrochloride in violation of 21 U.S.C. § 841 (A)(1), (B)(1)(B). During your sentencing, the court made a finding on whether or not your offenses warranted an enhancement. You received a Specific Offense Characteristic Enhancement of two points for possession of a firearm.

Under the Director's discretion, the Bureau is authorized to withhold certain Bureau benefits including early release if an instant offense "involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device)." The Court's decision to issue you a two point enhancement meets the aforementioned criteria.

The sentencing court issued you a two point Specific Offense Characteristic. This enhancement has not been modified or vacated by a court who has jurisdiction over your case. Additionally, we find that the information in your Pre-sentence Investigation Report (PSI) is sufficiently reliable to justify the decision.

Accordingly, your Regional Administrative Remedy Appeal is denied. If dissatisfied with this response, you may appeal to the Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC, 20534. Your appeal must be received in the Office of General Counsel within 30 calendar days from the date of this response.

6-22-05
Date


Regional Director, SERO

LEE VANCE THOMAS III, 11371-042
ATLANTA USP UNT: DET 2 QTR: J01-119L
601 MCDONOUGH BLVD SE
ATLANTA, GA 30315

RECEIVED

SEP 18 2005

WARDEN'S OFFICE
U.S.P. ATLANTA, GA

U.S. Department of Justice

Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-DIR-9 and BP-DIR-10, including any attachments must be submitted with this appeal.

From: Thomas, Lee Vance 11371-042 Birmingham FPC Montgomery
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A—REASON FOR APPEAL

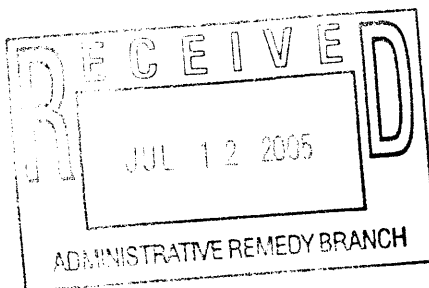
I hereby respectfully appeal the Southeast Regional Office's denial of my appeal. As grounds for the granting of this appeal I reiterate all arguments and claims presented in my BP-8½, BP-9, and BP-10. Based on the foregoing reasons I pray this Office grants me the relief requested by granting me the one year sentence reduction upon successful completion of the RDAP.

Respectfully submitted,

7/5/05
DATE

Lee J. Thomas III
SIGNATURE OF REQUESTER

Part B—RESPONSE



DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 376801-A1

Part C—RECEIPT

CASE NUMBER: _____

Return to: _____
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

Administrative Remedy No. 376861-A1
Part B - Response

This is in response to your Central Office Administrative Remedy in which you appeal your ineligibility for early release consideration pursuant to 18 U.S.C. § 3621(e). You contest the reliance on sentencing enhancements to preclude your eligibility for early release.

18 U.S.C. § 3621(e) provides the Director of the Bureau of Prisons (BOP) the discretion to grant a sentence reduction of not more than one year upon the successful completion of the Residential Drug Abuse Program (RDAP). Pursuant to 28 C.F.R. § 550.58 and Program Statement 5330.10, Drug Abuse Programs Manual, the Bureau is authorized to deny inmates early release eligibility if, in the Director's discretion, the current offense "involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device)." Furthermore, on January 10, 2001, in Lopez v. Davis, the United States Supreme Court upheld 28 C.F.R. § 550.58 as a permissible exercise of discretion by the Director of the BOP under 18 U.S.C. § 3621(e) (2) (B).

Bureau records reflect you were convicted of Possession with Intent to Distribute Cocaine Hydrochloride, in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(B). At sentencing, and as part of your U.S. Sentencing Guidelines sentence, the Court determined you were in possession of a weapon at the time of your offense and applied a two-point enhancement as a Specific Offense Characteristic. In accordance with Program Statement 5162.04, Categorization of Offenses, Section 7.b., the Bureau used the sentencing court's imposition of the two-point enhancement as evidence that you met this criteria. There is no entitlement to an early release but it is at the Director's discretion. Therefore, we find the decision that you are precluded from receiving a sentence reduction to be consistent with the above-referenced statute, regulation, and program statements.

The case cited in your appeal does not change the analysis of your case insofar as the sentencing court's imposition of the enhancement for your current offense has not been modified or otherwise vacated by a court with appropriate jurisdiction. Additionally, we find that the information in your Pre-Sentence Investigation Report (PSR) is sufficiently reliable to justify the decision.

Based on the above information, your appeal is denied.

September 2, 2005
Date

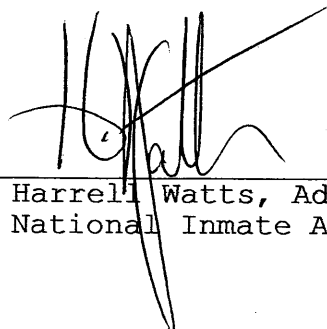

Harrell Watts, Administrator
National Inmate Appeals *col*

EXHIBIT 1

To Thomas, Lee	Reg No. 11371-042
From Dr. David A. Thompson <i>cut</i>	Institution FPC Montgomery
Title RDAP Coordinator	Date April 7, 2005

SECTION 1 - RESIDENTIAL DRUG ABUSE PROGRAM QUALIFICATION

You have requested participation in the Bureau's Residential Drug Abuse Treatment Program. My review of your case indicates that you (☒ DO ☐ DO NOT) meet the admission's criteria for the Residential Drug Abuse Program. It appears that you (☒ DO ☐ DO NOT) qualify to participate in the Residential Program. State the reason(s) below.

Comments

SECTION 2 - PROVISIONAL § 3621 (E) ELIGIBILITY (To be completed only if the inmate has completed or qualifies for the Residential Drug Abuse Treatment Program.)

For Residential Drug Abuse Treatment Program graduates to be eligible for early release, they must (DAPC must "x")

<input checked="" type="checkbox"/> Not an INS detainee.	<input checked="" type="checkbox"/> Not a pre-trial inmate.
<input checked="" type="checkbox"/> Not a contractual boarder.	<input checked="" type="checkbox"/> Not an "old law" inmate.
<input checked="" type="checkbox"/> Not have a current crime that is an excluding offense in BOP categorization of offenses policy (Mark an "x" in the appropriate block on the right).	<input type="checkbox"/> Not a crime of violence as contained in BOP Categorization of Offenses policy.
	<input type="checkbox"/> Not an excluding crime by the Director's discretion in Categorization of Offenses policy.
<input checked="" type="checkbox"/> Not have any prior felony or misdemeanor adult conviction for homicide, forcible rape, robbery, aggravated assault, or sexual abuse of children.	

My current assessment, in consultation with your unit team, is that it (☐ DOES ☒ DOES NOT) appear that you are provisionally eligible for early release. If not, list ALL the reason(s).

Comments

+2 enhancement for firearm

If applicable, I understand that a determination of early release for me is provisional, may change, and depends on continued positive behavior and successful participation in all components of the program, including community transitional services.

Inmate's Signature (indicate if refused to sign)	Refused to sign <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
--	---

cc: Drug Abuse Treatment File; Unit Team (place in section 4 of inmate central file; Inmate

BP-SI48.055 INMATE REQUEST TO STAFF CDFRM

TO: (Name and Title of Staff Member) Dr. David A. Thompson, Coordinator RDAP	DATE: April 10, 2005
FROM: Lee Vance Thomas, III	REGISTER NO.: 11371-042
WORK ASSIGNMENT: Food Service	UNIT: Montgomery H-Wing

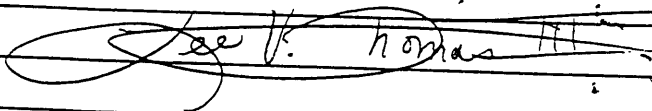
SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Thank you for the RDAP notice dated April 7, 2005.

I note that the notice states that I would not be eligible for early release pursuant to section 3621(e).

Please advise me which BOP Program Statement you are using as the basis for this decision.

Respectfully submitted,

 Lee Vance Thomas, III

(Do not write below this line)

DISPOSITION:

Your eligibility is based on the two point enhancement for a weapon in your PSI.

This is covered under Lopez v. Davis Decision

Please see your Case Manager for any additional details.

Signature Staff Member

Date